IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1135 OF 2002

Kamleshsingh H. Chowhan ..Petitioner.

Vs.

Brihanmumbai Mahanagar Palika & Ors. .. Respondents.

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Mr. Ruchir Tolat i/b M/s. L.C. Tolat & Co. for the petitioner.
Mr. E.P. Bharucha with Mr. Behram Kamdin i/b M/s. Wadia Ghandhy & Co. for respondent No.4.

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CORAM : DR.D.Y.CHANDRACHUD, J.

7th December, 2004.

P.C. :

1. This is a dispute between the Petitioner and the Fourth Respondent over the construction of a wall mounted toilet, which is open to the sky, by the Fourth Respondent. The Assistant Commissioner, 'C' Ward has passed the impugned order dated 28th January, 2002. The Assistant Commissioner has noted in the course of his order that the construction of a wall mounted toilet seat in the present case does not appear to involve the consumption of F.S.I. and that an out-let connection has been provided correctly to the sewer chamber by providing a separate night-soil pipe. Though there was a breach of certain conditions which were imposed in the communication of the Ward Officer dated 10th January, 2000, the Assistant Commissioner was of the

view that having regard to the physical condition of the wife and the father of the Fourth Respondent, it would be inhuman to demolish the “European Type W.C.” without furnishing a chance to the Fourth Respondent to get it regularized.

2. Accordingly, the Fourth Respondent was directed to obtain No Objection Certificate from the Assistant Commissioner, (Estates) within a period of three months, failing which the W.C. would have to be removed. There is no dispute about the fact that the Fourth Respondent has applied for the grant of a No Objection Certificate and that despite several reminders thereafter the application has not been disposed of.

3. The Fourth Respondent, the Court is informed, who was nearly 86 years of age when the Petition was filed since expired. In the affidavit in reply which has now been filed by Respondent No.4(vii) who is one of the sons of the deceased Respondent, it has been stated that when the petition was filed, the Fourth Respondent was suffering from Parkinsons disease. He had also injured his pelvic bone and right knee in an accident and his mobility was severely restricted. The wife of the deponent, Aruna,

is stated to be a Polio patient since her childhood. It has been stated that she fell down in an accident at home and fractured her polio affected left femur. This was operated upon and steel plates were inserted. Subsequently the steel plates got infected, as a result of which further operations had to be carried out for the treatment of the infection. In 1995 the steel plates were removed, as a result of which the mobility of the deponent's wife is stated to have been seriously affected. She is now stated to suffer from Post Polio Residual Paralysis in both lower limbs with a permanent disability factor of 50%. Medical certificates in relation to the disability of the Fourth Respondent and permanent disability certificate in respect of the wife of the deponent issued by the All India Institute of Physical Medicine and Rehabilitation have been annexed to the affidavit in reply.

4. Having regard to the aforesaid background of the case, I am of the view that it would be only appropriate and proper if the application for regularization is directed to be considered by he competent authority of the Municipal Corporation. Learned counsel for the Petitioner and Respondent Nos.4(i) to 4(viii) have tendered Minutes of the Order signed by the learned counsel, which are

taken taken on record and marked as “X”. The Minutes of the order provide thus :

“1. The Respondent No.3, The Asstt. Commissioner (Estates) of Respondent No.1 viz. Brihanmumbai Mahanagarpalika is directed to pass orders on the application made by Ishwarsingh Chowhan dated 15th April, 2002 within four weeks from the receipt of the copy of the minutes of order certified true by Advocates for Petitioner.

2. In the event of the permission prayed for in the application dated 15th April, 2002 is refused no action should be taken for two weeks from the date of communication of the order to the parties.

3. This order is passed without prejudice to the rights and contentions of the parties in this Petition and all contentions of parties are kept open.

4. The Respondent No.1 and/or 3 will hear both the parties to this Petition before passing any order.

5. The Writ Petition is disposed of in terms of the Minutes of the order with no order as to costs.

6. The certified copy of the order is expedited.”

The Petition shall stand disposed of in terms of the Minutes of the Order which are taken on record. There shall no order as to costs.